

REPORT OF COMMITTEE on
MINES and MINING INTERESTS.

Sacramento, 1856.

Tax on Chinese Miners.

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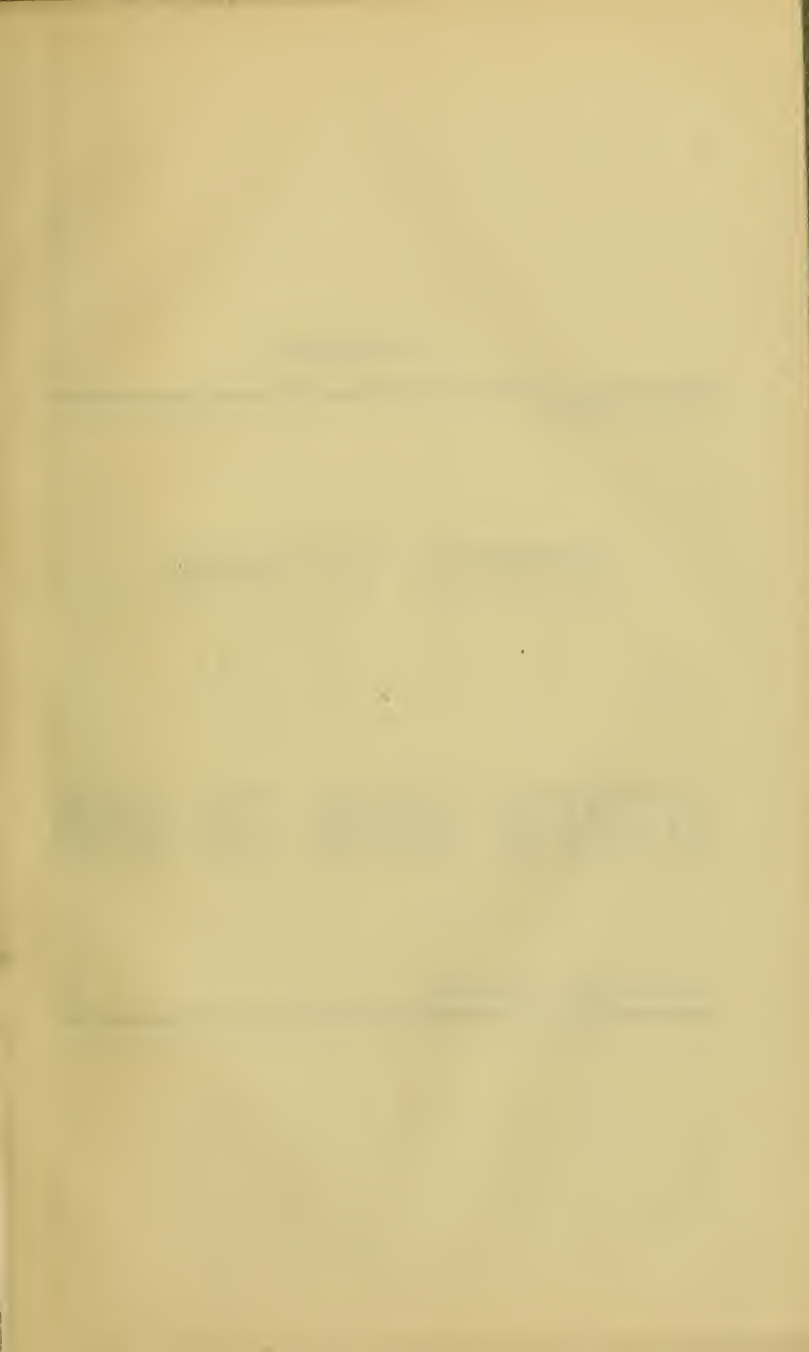
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[SESSION OF 1856.

REPORT OF COMMITTEE

ON

MINES AND MINING INTERESTS.

JAMES ALLEN, STATE PRINTER.

REPORT.

MR. SPEAKER :

The Committee on Mines and Mining Interests, to whom have been referred petitions praying for the reduction of the license tax on the Chinese, and also the reduction of the tax imposed upon the immigration of the Chinese, with a view to prohibit their immigration and other matters relative to the same, beg leave to report, that they have considered the same, and submit the following report thereon :

Your Committee deem the question of the migration of the people of China to California as the most important which can possibly engage the attention of the Legislature and the country.

Limiting our view alone to the present effects of that migration, it is a matter which commands our serious consideration. The influx of this race, so limited in comparison with possible events, has already aroused a conflict of feelings and interests replete with discord and difficulties. If at so early a period in our history we are perplexed with their presence, what may we not expect in the future ? Even now, it is beyond the power, or the financial ability, of the State to effect their removal, however unanimous and ardent the desire. All experience admonishes that there is no one thing in human affairs so hopelessly past redemption as the existence in the domain of the State, of a distinct and inferior race, however unwelcome their presence, or obnoxious their character. And as a distinct and inferior race, none are found to admit that they can ever mingle with our own on terms of social or political equality. Even admitting the possibility or probability of an amalgamation of different races in process of time, so as to produce a perfect moral, social and political equality, examples of which are to be found in Mexico and the South American Republics, we do not hesitate to say that such a consummation is more devoutly to be dreaded and avoided than the preceding alternative.

In view, then, of all the momentous consequences which attaches to this subject, whether present or future, merely possible, or eventually probable, we approach its investigation profoundly impressed with its transcendent and overwhelming magnitude and importance. It is a subject indeed, which may well call forth the highest efforts of the human mind, and the most elaborate disquisition of the philosopher and statesman. As men, as legislators and patriots, no higher subject can be presented for our deliberation. It is given to man to judge from the past, but the most prescient mind cannot quite lift the veil that enshrouds the future. In less than a single decade of our state and national existence, things

which now exist as facts, had they been foretold as prophecies, would have been classed with the tales of the Arabian Nights, or the fables of antiquity. A few short years ago we looked with curious eyes upon the straggling wanderer from Asiatic climes. Now, that vast empire which sustains in its bosom one-third of the population of this extended globe, threatens to precipitate upon us its innumerable hordes. Who, in the *abandon* of his fertile imaginings, could have fancied ten years since, that the Legislature of a powerful State, bordering upon the boundless expanse of the tranquil Pacific, would this day be sitting in earnest deliberation upon the admission or exclusion of Asiatics to the limits of their domain. Taught thus by such, and so potent examples of the varying vicissitudes of human affairs, and their possible mutations, as yet undeveloped, or at best but dimly seen in the vistas of the future, and invoking wisdom from above, with minds solely intent on the safety and welfare of the body social and politic, let us apply to this subject the most searching analysis and investigation. Let us be fully mindful that we are legislating for all future time, as well as the present; that if faithful to our own trusts, and cognizant of the true interests of the State, we are laying the foundation broad and deep, of one of the mightiest empires on which the sun has ever shone. Let us be watchful to lay them right. Let us apply to ourselves the sentiments of the epic poet so suggestively expressed, with respect to the grandeur of the destiny of Eneas, who, in his flight from the smoking ruins of Troy, planted his colors on the Italian shore: "That from thence arose the Latin race, the Alban fathers, and the walls of imperial Rome."

The policy of the exclusion of Asiatics was initiated by the Governor and Legislature of this State at its last session, and we believe such policy accords with the spontaneous sentiment of a large majority of the people. Such policy, however, is questioned by the mass of the commercial and trading classes of the State, and by many the legal and constitutional right of the State to enact and enforce such exclusion or prohibitory policy, is denied. The respect which is always due in concurrence with the natural rights of any considerable minority of our fellow citizens, and of which the majority, under the limitations of the social compact, cannot divest them, imperatively demands that this subject should receive a thorough and complete investigation in all its relations and aspects, legal, constitutional and otherwise. Your Committee, believing that the policy of exclusion thus initiated is sanctioned by natural and constitutional law and the highest interests of society and the State, will present for your consideration the facts, arguments and authorities on which they ground their belief. They will endeavor to show that every State or Nation, by virtue of its sovereignty, has the sole and full right to determine who, and what class of aliens may be admitted to, or excluded from their limits. They will state some of the reasons why it is both proper and necessary that the Chinese especially, should not be admitted within our domain. And they will endeavor to show how the exercise of such power by the State is entirely compatible and consistent with the Constitution of the United States.

And first, by the law of nature or the law of Nations, no State or Nation is under any obligation to receive aliens into its domain, if it conflicts with the true interests, or in any way endangers the peace, safety or happiness of the State. And the question, whether such reception of aliens does or does not thus endanger the State? is a question of which the State affected is the only proper and sole arbiter and judge, since in the nature of things there can be no other. The duties and obligations of men in a State or Nation, correspond strictly with the duties and obligations of States or Nations, with such exceptions as may arise from the incompatibly different nature of the subjects; of which this question of the admission or exclusion of Chinese is not an exception. It is, not to be inferred, however, that there is no rule or law of action of binding force, upon individuals

in a state of nature, or Nations; for as men and Nations are mutually dependent, more or less, upon each other, they are by necessity bound to the observance of certain laws or rules of action, which may be termed obligations. Vattel lays down the law thus: "Hence is deduced the establishment of natural society among men." The general law of that society is, that each individual should do for the others every thing which their necessities require, and which he can perform without neglecting the duty that he owes to himself. The natural working of this law is perhaps best exemplified in what may be termed the rites of hospitality, for as men more nearly exist in a state of nature, there are the rites of hospitality most punctiliously observed, and for the reason that wants and necessities in that condition are more pressing and immediate. Men living in a state of nature, though thus observant of these rites, cling with the greatest pertinacity to appropriated rights, and most mortally resent the invasion of them.

The law of Nations among European States, (and we do not speak of special treaties or stipulations,) is mainly founded upon the principles of the Christian religion. Thus the Apostle Paul, while he uniformly commends the giving of alms and the relief of the distressed, says: "that he who does not provide for his own household has denied the faith and is worse than an infidel." Such is the identical substance of the law as laid down by Vattel. Nations, like individual men in a state of nature, are under obligations to do and perform for others all that they can do, consistently with the obligations and duties that they owe to themselves; but no man is obliged to starve himself to feed another, nor is any nation bound to jeopardize its own peace, safety or welfare by admitting the subjects or citizens of a foreign nation to reside within its limits. No man is bound to sacrifice his own life to save that of another. Nor is a Nation bound to do what is equivalent to that—(that is to say)—sacrifice the peace and safety of its own people by the admission of aliens within its domains.

To illustrate the pertinency of our propositions, that the reasonings derived from the position of individual man is strictly applicable to the position of Nations, we quote Vattel. Vattel says: "Nations being composed of men naturally free and independent, and who; before the establishment of civil society, lived together in a state of nature. Nations, or sovereign States, are to be considered as so many free persons living together in a state of nature." And again: "Since right arises from obligation, the nation possesses also the same rights which nature has conferred upon men, in order to enable them to perform their duty." And again: "We have already seen that men united in society, remain subject to the obligation imposed upon them by human nature. That society, considered as a moral person, since possessed of an understanding, volition and strength peculiar to itself, is therefore obliged to live on the same terms with other societies or States, as individual man was obliged, before those establishments, to live with other men, that is to say, according to the laws of natural society, established among the human race, with the difference only of such exceptions as may arise from the different nature of the subjects." Acting in harmony then with the authority above quoted, we will proceed by way of illustration to suppose the case of an individual, who had originally entered upon and appropriated to his use a certain well-defined tract of land. Such individual could not by any principle of natural law be obliged to admit the intrusion of a stranger upon that domain, but would be justified by the conscience of all mankind in repelling by sufficient means such intrusion. Actual examples of this kind are not wanting in the history of the primitive patriarchal governments. The case supposed of an individual, is in every respect applicable to the domain of a Nation; for a Nation only possesses the right which have been surrendered to it by individuals, and the government can only be considered as an agent invested with the attributes of personality, and acting for the aggregated rights thus surrendered of all the individuals com-

posing the Nation. This is all that constitutes sovereignty, and the Nation possesses by virtue of that sovereignty the same right that the individual man had to admit or exclude aliens from its domain, or a domicile within its domain, according to its sovereign will and pleasure—the offices of humanity excepted.

On this principle it is that aliens are not competent to possess a title to real estate, except by special grace of the sovereign power. The escheatage of estates of aliens is on the same principle. That the ground-work of our rights may be fully understood, we quote again from Vattel's *Law of Nations*: "The duties that we owe to ourselves being unquestionably paramount to those we owe to others. A nation owes herself in the first instance, and in preference to all other nations, to do every thing she can to promote her own happiness and perfection. (I say everything she can, not only in a physical but in a moral sense; that is, everything she can do lawfully and consistently with justice and honor.) When, therefore, she cannot contribute to the welfare of another Nation without doing an essential injury to herself, her obligation ceases on that particular occasion, and she is considered as lying under a disability to perform the office in question." And again: "A Nation or State has a right to everything that can help to ward off imminent danger and keep at a distance whatever is capable of causing its ruin; and that for the very same reasons that establish its rights to the things necessary to its preservation." Except for the pertainacy of those whose interests, pecuniary and otherwise, are affected, who totally deny all right to restrict the immigration of Asiatics to this State, we should not have dilated at such length on this question of the right of a State or Nation to admit or exclude aliens. The rights of the General Government, as interfering with the rights of this State, we will consider hereafter.

It is sufficient for the present, to know that certain immutable and absolute rights, incapable of annihilation, exist somewhere. We shall make but one quotation more from the same author, who, as he wrote about a century ago, is certainly disinterested in the matter, on the principle of the saying, "that it will make no difference a hundred years from this time." The author writes entirely apropos to the present question: "The sovereign may forbid the entrance of his territory either to foreigners in general or in particular cases, or to certain persons, or for certain particular purposes, according as he may think it advantageous to the State." There is nothing in all this that does not flow from the rights of the domain and sovereignty; every one is obliged to pay respect to the prohibition, and whoever dares to violate it incurs the penalty decreed to render it effectual. But the prohibition ought to be known, as well as the penalty annexed to disobedience. Those who are ignorant of it ought to be informed of it when they approach to enter the country. Formerly the Chinese, fearing lest the intercourse of strangers should corrupt the manners of the Nation, and impair the maxims of a wise but singular government, forbade all people entering the Empire; a prohibition not at all inconsistent with justice; provided they did not refuse human assistance to those whom tempest or necessity obliged to approach their frontiers. It was salutary to the Nation without violating the rights of any individual, or even the duties of humanity, which permits us, in case of competition, to prefer ourselves to others.

Objections are commonly made, even by members of the legal profession, that there is no power granted in the Constitution of this State, or the United States, to exclude aliens. But the power in any case does not exist by virtue of written constitutions, but by virtue of the laws of nations, as deduced from natural law, the obligation and rights that flow from which we have previously elucidated.

Most of the diplomacy, treaties and negotiations, as concluded and carried on between the United States and foreign nations, are discussed, conducted and regulated, not by any express provisions of the Constitution, but by virtue of, and

with reference to the laws of nations. All nations, communities, and even individuals, are more or less subject to the laws of nations, which are simply the natural rights or obligations of mankind. According to all writers on the law of nations, every nation has the undoubted right to exclude or admit aliens. No nation can absolve itself from these laws; and if they cannot exempt themselves from the burdens imposed, they are correspondingly entitled to all the privileges conferred. It is by virtue of the law of nations that the United States claims their national flag protects her ships on the high seas from search and seizure, and not from any provision of the Constitution.

No nation has ever existed which has more fully and unequivocally recognized and maintained the laws of nations, and all the obligations and duties arising from, or inculcated by those laws, than the United States. All arguments drawn therefore, from the absence of express constitutional provisions, authorizing the exclusion of aliens, rests on no solid basis. Neither the United States nor the individual States can be exempted from the operation and binding force of the laws of nations, and a renunciation of those laws would tend to their utter annihilation. That the framers of the Constitution of the United States held precisely the same views herein expressed, is susceptible of the clearest proof. There is no express provision in the Constitution, that Congress shall have the power to prohibit aliens from immigrating into the domain, or limits of the United States; but it is by the clearest implication, taken for granted in the ninth section of the Constitution, that Congress had the power to exclude aliens. Yet where did they get the power except by the law of nations? The said ninth section is this: "The migration, or importation of such persons in any of the States now existing shall think proper to admit, *shall not be prohibited* by the Congress prior to the year 1808." The words, *shall not be prohibited*, implies beyond all doubt that the full power was taken for granted by the law of nations, to exist; for it could exist by no other law whatever. Applying these principles, then, to the immigration of Asiatics, it is under the law of nations; that we claim that the United States or California, each in the sphere of its sovereignty, has the right to exclude Asiatics from its limits or domain. It may be necessary here to make a sort of digression, or episode from the main arguments, in order that all may understand the difference between migration of Asiatics and aliens of European birth. We shall not quote authority for it, though there is abundance of it, as the principle is at once apparent. Prescription, or custom, establishes a sort of *quasi law*, and where it has been the established usage to permit the free entry of aliens, as has been the case with the admission of aliens of European birth to our country, it would be unlawful, under the law of nations, without a long and formal notice given, to abrogate the right of such aliens to enter our country; and not then, unless it could be clearly shown that danger to the State would arise therefrom. This is, however, the right that is gained by prescription or custom, and by no means destroys the right that every nation has to exclude aliens, except that the rights acquired by prescription, must be respected. Now, the Chinese, or Asiatics, have as yet acquired comparatively nothing by prescription, while Europeans have; and herein lies the difference in the two cases. Herein lies the difference also, which leads into mistakes, those who would apply the same rule of law without modification, to the immigration of Asiatics and Europeans. Asiatics have gained no rights by prescription, while Europeans have, and yet the admission or exclusion of both is under the law of nations. Europeans having had the prescriptive right from time immemorial of migration, it has come to be considered constitutional right, when the right is not derived from that source at all; and hence, reasoning from the case of Europeans, it is concluded arbitrarily, and from the most mistaken ideas and premises, that Asiatics, by the same rule, cannot be excluded; and hence the idea, that to exclude aliens of any description is

unconstitutional. The difference, however, is, that Asiatics have no prescriptive rights, while Europeans have ; and the right to exclude both are founded in the laws of nations, and not on constitutional law. Having established, as we believe, the inalienable right of a nation to admit or exclude aliens, which in our case must exist in the particular State, or the United States, each in the sphere of its sovereignty, and having supplied a hiatus never before filled, we will, before proceeding to consider the peculiar sphere of the sovereignty of the State and the United States, in the complex form of our government, inquire whether there are not insuperable objections to the admission of the Chinese to this State.

The rule as laid down by Vattel, is this : "That we are to do for others all that we can do, without neglecting the duties that we owe to ourselves. We are to inquire, then, whether, and in how much, and in what way the immigration of the Chinese may be detrimental to the well-being, interests and happiness of the State. However true it may be in theory, orthodox in morals, or sound in philosophy, that all men are by nature free, equal and independent, yet the imperfections and fallibilities of human nature are such, and so great, that all human wisdom has failed to reduce such theory to a living reality, or a practical truth. Taking existing facts, then, and not speculative truths, it is apparent from all experience, that there must be with the white race, a wide difference between them and the other races of mankind. From some cause, natural or adventitious, the Caucasian race has, so far as history has come down to us, been paramount in wealth and power, pre-eminent in the arts and sciences, and most distinguished in literature, and whatever most adorns and renders illustrious the character of man. There is little room for wonder, then, that the Caucasian race, in its pride and power, looks down with a sense of superiority, upon the other races of mankind. In practical results, it makes no difference whether there be any right reason for such distinction or not ; the fact is unquestioned and unquestionable. It is within the province of the legislator only to build on facts, and the prejudice of race in modern times seems to be the fact of facts. It is the part, then, of wise statesmanship, to accommodate itself to the imperfections of human nature in every exigency. That the contact of inferior races with the superior race is eminently prejudicial to the superior race, if not to both, is a proposition that few will deny. Even the contact of two distinct races, equal in mental, moral and social capacities, could not fail to produce destruction and discord. The most perfect condition of human society would seem to be that in which all are upon a perfect equality as to the exercise of natural rights, and all deviation from that as a retrograde movement. The immigration of the Chinese into California, is equivalent to the creation of a distinct caste. Before we legislate for such a purpose we had better look before we leap. We shall not expatiate upon the advantages or disadvantages of the presence of an inferior and servile race in our midst.

The American people, of all others, need no instructions, or discussions, on such a topic. It is sufficient to say, that we believe that there is no one point in the range of political topics upon which there is in the United States so unanimous a coincidence of sentiment, as upon the evils of the existence of an inferior race in our midst, nominally free, and yet, virtually slaves. It is the danger of establishing such a servile class within our limits, which in time will be beyond the power of the State to eradicate, if it is not already, that forms the chief objection to the admission of the Chinese to our State. Indeed, the strongest argument that can be adduced for the legitimacy of slavery, is the co-existence of an inferior and superior race in a State, thus producing an abnormal condition of society incompatible with the doctrine, that all men are free, equal and independent. It would be worthily curious to inquire whether the association of two distinct races, equal in mental, moral and social capacities, would not be productive

of incurable mischief and discord. Perhaps an approximation to this may be found in the history of the Irish and Anglo-Saxon races in Ireland. But we are not left in doubt as to the effect of castes, even where the different castes are of the same race. In India, from time immemorial, the people have been divided into five different castes, no individual member of which has ever been allowed to eat, drink, sleep, or intermarry, with an individual not of his own caste. The effects of which may be seen in the fact, that from the time of Alexander the Great to the present, they have been ruled by Princes, or persons, of alien blood or birth. They are described by geographers as an indolent, spiritless, race, devoid of patriotism, and almost destitute of moral honesty. In modern times the power, wealth and civilization of European States, from whom we derive our origin, have advanced *pasi passu* with the abolition of feudal tyranny and serfdom, of which England is an illustrious example. In all cases, under all circumstances and all conditions, we find that different castes, whether founded upon distinction of race, or the civil organic law co-existing in the same community, has been productive of nothing but mischief, weakness and discord to the nation tolerating it.

There is no instance on record, of any State, ancient or modern, which has attained to high eminence, the people of which have been composed of the discordant elements of distinct races.

Ancient Egypt is the most notable example of the kind, and even this is somewhat in doubt; but she never held anything more than her own.

The peculiar propriety and applicability to the present case of all that we have advanced, we shall endeavor to render apparent.

The question of Chinese immigration is entirely unique in its kind, and unexampled in the annals of nations.

The population of China is immense, and almost beyond conception. Twice the population of the United States if abstracted from China would only relieve her of a burden, but would overwhelm us. The consequence of an unrestricted immigration of the Chinese is hardly within the ken of human vision to foretell.

A conservative position on this question would seem to be dictated by sound policy. But let us consider the immediate and obvious consequences of the immigration of the Chinese to this State, which, in our opinion, will be the same, however numerous the immigration, unless, indeed, in process of events, they should become the dominant race. They are now considered a servile, inferior and degraded race. Their position is that of the mere laborer, and does not this derogate from the character and dignity of labor? Does not this render labor odious and degrading to the superior race? Is the labor of the white man to be brought in competition with that of the Mongolian race? And is not labor the sheet-anchor of our hopes? the very foundation of our anticipated wealth and prosperity? Who does not recognize labor as the foundation of wealth? and shall we, for a temporary advantage, sacrifice all our prospects of the future?

Admitting that the migration of the Chinese might be of slight present advantage, is that a compensation for all the consequences that may be entailed upon us by their unrestricted admission? What is, and has been, the want of California? Not the want of men of the learned profession; not the want of men of learning and science; not the want of politicians and office-seekers, of which, God and the people know, we have had enough, such as they are or have been; but men of bone and muscle, who will work and do something. This is what all wise and foreseeing men have been solicitous for; but for our own sake do not fill the vacuum with Chinese, who will in the end make a greater vacuum than they fill. What California wants to fulfill her destiny, is the migration of white men, with their wives to breed children; and not Chinese, either with or without wives, to render labor, (the noblest duty that man can perform,) dishonorable or degrading.

Shall we degrade in the social scale our own beloved race, who are our own kith and kin, and thus degrade ourselves, and thus the whole community, except a privileged aristocratic few who may be immeasurably exalted above us all? The ridiculous and absurd assertions, that the Chinese labor does not affect the price and labor of white men, would be unworthy of notice were it not that it has been reiterated so often, that by mere force of repetition some may believe it. But is this question of labor in the present case exempt from the laws which govern the price of labor in every other instance?

Labor is cheap in some countries and dear in others; and till this present instance it has been held that its price is regulated by the laws of supply and demand; when there is an abundance of goods in the market, prices are low, and when there is a scarcity, high. We have heard of indulgences and dispensations granted by Popes and Kings, but we had supposed that these were not applicable to the laws of trade or prices, as regulated by the laws of supply and demand. It is singular that persons who value themselves so highly on their financial knowledge, as those constituting the commercial classes, should have needed information on so plain a point. And is this, which at best can be but a mere temporary advantage, to be the generous, lofty and high-souled principle of the policy and republicanism of the glorious and golden State of the Pacific? We think not, and we believe the people are of the same mind. Labor being incontestibly the foundation of wealth, and in a great measure in modern times the source of national power and greatness, it is a duty imperative upon us, as legislators, to see that the dignity of labor be neither sullied nor impaired. Labor of the mind or body is in the order of nature, and the inevitable conditions of our existence; and all who disregard this fundamental law are recreant to the best interest of society and the State. We say, with all emphasis, that it is the true policy of the State that labor should be honored and respected. The interest of the State cannot be better subserved than by impressing upon the whole community the exalted worth and dignity of labor. If we would encourage production and lay on a solid basis the fabric of national greatness and prosperity, we must elevate the laborer in his own esteem, and this cannot be done by rendering labor odious and degrading. The interest of the mines and miners, your Committee can say from their intimate knowledge of those interests, have heretofore been of considerable importance, and probably will be hereafter; indeed we think the mines occupy in the scale about the same relative position in relation to agricultural and commerce, that agriculture does to manufactures and commerce in the eastern States; in short, that it is the great and distinguishing interest of California. That the interest of trade and commerce are of vital and indispensable importance to all classes, and none more than the mining class, cheerfully acknowledge, and will promote to the extent of their capacities, all just and rightful extension and development of those interests, consistent with their own interest and the lasting interest of the State.

The commercial classes, however, are but too apt to place too high an estimate upon their relative importance. From their centralization, publicity and concert of action, they are often, from the influence they wield, well nigh considered to be the State itself. The producers and consumers, however, in a well adjusted State, constitute the bulk of the community, while the office of the commercial class is simply to effect an exchange of products between the producer and consumer. Now, the bulk of the arguments in favor of the introduction of the Chinese, are mainly founded upon commercial consideration.

The potency of the almighty dollar is invoked with special fervor in their behalf. We have held up to view the economical advantages to be derived from their utility as cultivators of rice, cotton, sugar and tobacco, the mere mention of which is fraught with painful suggestions.

The hue and cry seems to be an increase of population, that consumption may

be enhanced and trade may prosper, and the quantity, not the quality, is the only thing considered. This is about as senseless as for a man famished with hunger to fill up with saw-dust pudding instead of wholesome food. In the one case the man might be relieved by a purge; but alas! what physic could purge the State. The arguments urged for the unrestricted admission of the Chinese, by those who are the advocates of such policy, are weak, confused and contradictory.

The grand proposition with them is, that California wants population; a proposition to which all are agreed. But when it is urged that by admitting this class of people, we are in danger of inflicting upon posterity, if not ourselves, the most appalling and incurable evils, we are then told that they are but temporary sojourners in the country, and nothing is to be apprehended from a permanent population of Mongolian blood. And yet these same advocates, with the coolest self-complacency and assurance, urge with great real or assumed gravity, the indispensable need and importance of an unrestricted immigration of this people, on every commercial, industrial, and even moral and physical consideration.

Not only our financial interests, but the spirit of religion and philanthropy, are invoked in behalf of the cause. The true statesman must scan with philosophic eye the whole chain of causes and effects, the remote and ultimate consequences of measures no less than their immediate effects, and must not suffer himself to be persuaded too much by feelings, interests or sympathies, however worthy in themselves, which are only limited, transient and incidental.

Your Committee are compelled to believe that all the appeals made for the unrestricted migration of the Chinese, are mainly founded upon considerations of a transient and temporary character. They are not insensible to the appeals of religion and philanthropy, but will say to those who they believe to have been actuated by the worthiest motives on these grounds, that David, the sweet singer of *Israel* hath prophesied that "I shall give thee (the Christian Nations) the heathen for thine inheritance and the uttermost parts of the Earth for thy possession." It is implied from this prophecy that, though we may possess the birthright of the heathen, the heathen cannot possess *ours*, and that in a moment of forgetfulness they are asking for that which is rightfully ordained otherwise. The peculiar evil of California, which has eminently detracted from the wealth and prosperity of the State, has been the transient sojourn of its population within its limits. The people of the old States, in common with foreigners who have made their entrance and exit, accumulating and carrying their accumulations out of the State, has kept the State in poverty, besides inflicting upon us other evils. It may not be too much to say, that a large portion of the officers and legislators of the State have had no permanent or personal interests therein, and for that reason have not acted under a proper sense of the responsibilities which should have attached to their positions. If then the migration of the Chinese be of a temporary character, it is for that reason objectionable. The real interests of California can never be much advanced but by the migration of those who will become permanent residents, and who will here fix their home. We cannot see that a population of Mongolian blood, whether as inhabitants or sojourners; can add anything to the wealth, strength and glory of the State.

We shall not enter into any disquisition upon the financial statistics that have been presented, showing the financial and commercial importance of the Chinese population, for the reason that we believe that no measures which will be recommended by us, will for a long time materially vary their aspect. Should the effect be to diminish that class, the diminution will be gradual, and can make no serious revulsions. If these statistics, however, are presented for the purpose of showing the supposed advantages that may arise from an increased immigration, we can only say that in a question of this kind we must be governed by considerations of a higher character than dollars and cents. In this aspect of the case,

it cannot be said that we are annihilating or disturbing vested rights or existing interests. We are not unaware of the projects entertained of importing this people to this country. It has been announced, at least in one paper (the *San Francisco Herald*), that there is a project on foot, by means of associated capital, to import twenty-five thousand Chinese per year into the State. Should this be carried out without hindrance, other associations for the same object may not unlikely be originated. Should such projects be put in operation, your Committee feel warranted in saying that the people of this State will most effectually nullify such proceedings, and in the event that other means fail, will appeal to the *ultima ratio regum*, and take the law into their own hands. The people of the mining regions, while they are graciously disposed to a sufferance of those who have come here upon what may be alleged to be an implied invitation, will in no event suffer themselves to be overwhelmed with further importations of these terrestrial Celestials. History is pregnant with examples of direful evils entailed upon nations, from the most paltry gratification of a present selfishness and avarice. Slavery in America is an apt illustration of the great consequences that may flow from the smallest beginnings. The colonies were originally opposed to the introduction of slaves, but for a little benefit to commerce, Great Britain upheld the trade, regardless of future consequences and all remonstrances. To show the parallelism of that and this case, we will quote a little of history. At a Convention held at Williamsburgh, Virginia, August 1st, 1774, it was resolved, "We will neither ourselves import, nor purchase any slave or slaves, imported by any other person, after the first day of November next, either from Africa, the West Indies, or any other place." Mr. Jefferson addressed a letter to this Convention, in which he wrote as follows: "For the most trifling reasons; and some times for no reason at all, his Majesty has rejected laws of the most salutary tendency. The abolition of domestic slavery is the object of greatest desire in those colonies where it was unhappily introduced in their infant state. But previous to the enfranchisement of the slaves, it is necessary to exclude all further importations from Africa. Yet our repeated attempts to effect this by prohibition, and by imposing duties which might amount to prohibition, have been hitherto defeated by his Majesty's negative. Thus preferring the immediate advantages of a few African corsairs to the lasting interest of the American States, and so the rights of human nature was deeply wounded by this infamous master."

The vetoes of all Acts passed by the colonies, repressing the introduction of slaves by the King of Great Britain, is what is referred to in the first specifications in the Declaration of Independence, and in these words he has refused his assent to laws the most wholesome and necessary for the public good. This is a perfect example of the immense consequences that may flow from the smallest beginnings.

The whole system of slavery in America has been the result of what originated, as Mr. Jefferson says, in the paltry "immediate advantages of a few African corsairs," engaged in the slave trade. We do not speak of this in reference to any question of slavery, but simply to show that we must not give way to the clamors of those who are immediately interested in the further immigration of the Chinese. No mortal man can tell what the result of this Chinese immigration may be. It is to be hoped that neither this State, or the United States, will be governed by any mere paltry consideration of dollars and cents in this matter. Not the least objection in the catalogue to the immigration of this people, because it is without remedy, is this: That they cannot have the legitimate protection of government, for the reason that they are incompetent to testify in our courts in most cases, where their testimony is of the least value. This works irreparable injury to them, and is most corrupting and demoralizing to our own people. They are daily subjected to the most wanton and barbarous atrocities, and yet for

want of their testimony, the perpetrators must go unwhipt of justice. There is nothing which so blunts the finer feelings of humanity, and deadens the moral sensibilities, as familiarity with crime and outrage. The knowledge that murder and robbery may be committed on them with impunity, is an incentive and premium to crime, and this powerfully tends to the subversion of public morals, yet we cannot, consistently with the duty we owe to ourselves, permit them to be competent witnesses against us, and this not for want of intelligence, or peculiarity of language, or color, but from an utter want of moral qualification. We reject as incompetent testimony, the evidence of one of our own race who is shown to be unworthy of belief, and on the same principle, we are justified in excluding the testimony of the Chinese. Missionaries, and all who have acquired a knowledge of Chinese character, uniformly agree that they are verily a nation of liars and unworthy of credit. Their religion, in all its systems and forms, is based on nothing that insures, or guarantees moral responsibility. Of the ideas which with us give sanctity to an oath, they have not the most remote conception. Bayard Taylor, a late eminent traveler, describes them as horribly depraved, beyond anything that can be conceived, and gives it as his opinion that the world has lost nothing by non-intercourse with them.

The objections we have raised are, we think, sufficient to show that their presence among us is neither beneficial or desirable; but on the contrary, highly detrimental to the welfare, safety and happiness of the State. But we deem it our duty to say something which may, if possible, mitigate the condition of this unfortunate people who are among us. We must not forget that they came among us in the first instance, under the sanction of an implied invitation. Good faith and honor, which should be as strictly observed in public affairs as private, dictates that we should not wantonly and vexatiously oppress them, whatever their defects and short-comings. We must not forget that they are, after all, human beings, the children of the same father, and destined to the same immortal existence.

The duties that we owe to ourselves and our country, forbid that we should permit their future immigration, or admit them to an equality with ourselves; but should, nevertheless, extend to them, so far as we can consistently, human sympathy and assistance, and should not subject them unduly to harshness and cruelty. Many of these Chinese among us, we are credibly informed, are men of good education, fine feelings and much consideration in their own country; and yet such are oftentimes most unwarrantably and vexatiously annoyed with insults and impertinences unbecoming men who have any claim at all to the character of gentlemen, or even decent citizens. These things are wrong and should not exist. From such causes it is much to be feared that they will gain most unfavorable impressions of us, our ideas and institutions. It is an object of the highest importance that they should carry back with them to China, correct and favorable ideas of us and our institutions, for they are indeed a great nation.

We will now inquire into the relative scope of the powers to prohibit or restrain the admission of aliens, as belonging to the State or General Government.

That the right to exclude exists either in the State or General Government, or in both, is a certainty, for the right cannot be extinct. We have shown that Nations have the right, by the law of Nations, to exclude aliens. The proposition, we think, is evident, that both the State and United States, each in the appropriate sphere of its sovereign powers, has the right of exclusion.

The right to exclude aliens arises from the rights of domain and sovereignty. The United States has its domain and sovereignty, and each State has its domain and sovereignty; and the measure of the domain and sovereignty of each, is the measure of the right of each to exercise the power.

The objects of the General Government are, to insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity. As the General Government

has the chief care of our external affairs with other nations, it would seem that they have the paramount power to admit or exclude aliens in all cases in the peculiar province of our foreign relations and the regulations of foreign commerce.

The external relations of the Government concerns war, navigation, commerce, and international intercourse. To the full extent of these limits, objects and purposes, the General Government must have the undoubted power to admit aliens, either with, without or against, the consent of any State; but such exclusive power to admit, can only be exercised in relation to war, navigation, commerce and foreign intercourse. Thus, no State would have the right to exclude any aliens engaged in navigation and commerce; nor could the State prevent the mere passage through its territory, of aliens, against the will of the General Government.

But the power of the General Government here ceases, as against the will of the State to exclude aliens. Whatever relates to domicile, residence, or inhabitancy, or other occupation than navigation, commerce, errands of war, passage through the territory of the State, or a temporary sojourn for a limited time, or for a special purpose, within the limits of the State, belongs exclusively, and appertains, to the State, which she may determine as to the exclusion of aliens, either with, without, or against the will of the General Government.

As to the question, whether the General Government has the right to prohibit the entrance within the limits of the United States of aliens, with, without, or against, the consent of the individual States, that is a more difficult and complicated question, which, happily, it is not necessary to solve in the present instance.

It seems to us that, with the exception of the power of the General Government to enact a total prohibition of the admission of aliens, we have well defined the limits of the powers of the States, and the General Government to admit or exclude aliens, as with, without, or against, the consent of each.

If our reasons and conclusions be correct, then we have the undoubted right to exclude the Chinese from admission to the State for all purposes, except as has been excepted in the foregoing; and if we have the right, there being ample reasons for their exclusion, they should be excluded, or at least restrained. The tax proposed to be laid, it is true, does not go to the length of total exclusion, but is in the nature of a restraint or virtual prohibition. If there be a right to exclude entirely, all measures short of that must be lawful, as the greater includes the less. We do not deem it necessary to go at greater length into the argument, though, perhaps, we might profitably do so. We do not see how the arguments and propositions that have been used and embodied in the numerous decisions in the different courts upon this subject, can be based upon different grounds and reasons than those we have advanced. The decisions, it is true, are more in the nature of conclusions than an elaboration of the elemental principles on which they are based. We shall give some of the decisions of the courts, that it may be seen how far they may be in consonance, concord and harmony, with what we have previously written. Although it is undoubtedly a presumption on the part of your Committee to have attempted so much, still, as the subject is one of engrossing public interest, which seemed most imperatively to have demanded examination, they thought they might, at least, make a beginning and, perhaps, be the means of making some suggestion which abler hands and wiser heads might at a future time perfect.

We have remarked once in the report, that the express provision to exclude aliens is not in the Constitution, but the right is by the law of nations, and that this is proved by the 9th section of the Constitution, which contains no positive grant of power at all, but is only a limitation of an ample power possessed under the law of nations.

The existence, however, of this limiting clause, or section of the Constitution, proves absolutely the existence of the power which could only exist under the

law of nations. One thing may be justly claimed from the doctrines we have advanced, that we may not lay a capitation tax for the purpose of prohibition on Chinese merchants, or traders, against the will of the General Government.

But this power of prohibition is a concurrent power with the States and the General Government, and probably in every instance, (except the right of the paramount power of the General Government to exclude aliens from the whole limits of the Union, which we have not here discussed); and in the absence of any regulation on the part of the United States, the State does not usurp any authority in making a regulation for itself.

By the Supreme Court of the United States it has been well established, as a true general rule, that notwithstanding a grant to Congress in express terms, if the States are not directly forbidden to act, it does not give to Congress exclusive authority over the matter, but the State may exercise a similar power, unless from the nature of the subject, and its relation to the General Government, a prohibition is fairly, or necessarily, implied. [7 Howard, p. 533.] Chief Justice Taney says: "This power, (the power to regulate commerce), although expressly delegated to Congress, is not prohibited to the States—as in the power to levy duties on imports—and each State still retains the right to regulate its own commerce, subject always to the paramount enactments of Congress in its proper sphere."

Chief Justice Taney, in the case of *Smith v. Turner*, 7 How. 465, observes: "The first inquiry is, whether, under the Constitution, the Federal Government has the power to compel the several States to receive, and suffer to remain in association with its citizens, every person, or class of persons, whom it may be the policy or pleasure of the United States to admit. If the people of the States of this Union reserved to themselves the power of expelling from their borders any person, or class of persons, whom it might deem dangerous to its peace, or likely to produce physical or moral evil among its citizens, then any treaty, or law of Congress invading this right, and authorizing the introduction of any person, or description of persons, against the consent of the States, would be an usurpation of power which this court could neither recognize nor enforce. I had supposed this question not now open to dispute. It was distinctly decided in *Holmes v. Jennison*, 14 Peters, 540; in *Groves v. Slaughter*, 15 Peters, 449; and in *Pregg v. Commonwealth of Pennsylvania*, 16 Peters, 539.

If these cases are to stand, the right of the State is undoubted, and it is equally clear, that, if it may remove from among its citizens any person, or description of persons, whom it regards as injurious to its welfare, it follows that it may meet them at the threshold, and prevent them from entering; for there could be no reason, of policy or humanity, for compelling the State, by the power of Congress, to imbibe the poison, and then leaving them to find a remedy for it by their own exertions, and at their own expense. Certainly no such distinction can be found in the Constitution, and such a division of power would be an inconsistency, not to say an absurdity, for which I presume no one will contend. The power of determining who is, or who is not dangerous to the interest and well being of the people of the State, has been uniformly admitted to reside in the State. I think it therefore to be very clear, both upon principle and the authority of adjudged cases, that the several States have a right to remove from among their people, and to prevent from entering the State, any person, or class, or description of persons, whom it may deem dangerous or injurious to the interests and welfare of its citizens, and that the State has the exclusive right to determine, in its sound discretion, whether the danger does, or does not exist, free from the control of the General Government."

Although your Committee on Mines and Mining Interests have viewed the matter referred to them with reference to those interests, yet they express themselves on general principles of a wise public policy, which they believe applies,

and ought to be applied, to all the classes of the State. We will remark, that the treaty existing between the United States and China, does not provide that the people of China may have free admission to the limits of the United States, or the States; there is, therefore, nothing in that that in any way interferes with the action of this State in excluding Chinese either had, or proposed to be had, on that subject. We, therefore, recommend that the amount of the immigration tax, imposed by the law of 1855, should be retained, and that the licenses for working in the mines should be fixed at four dollars per month; and report bills for those purposes and recommend their passage.

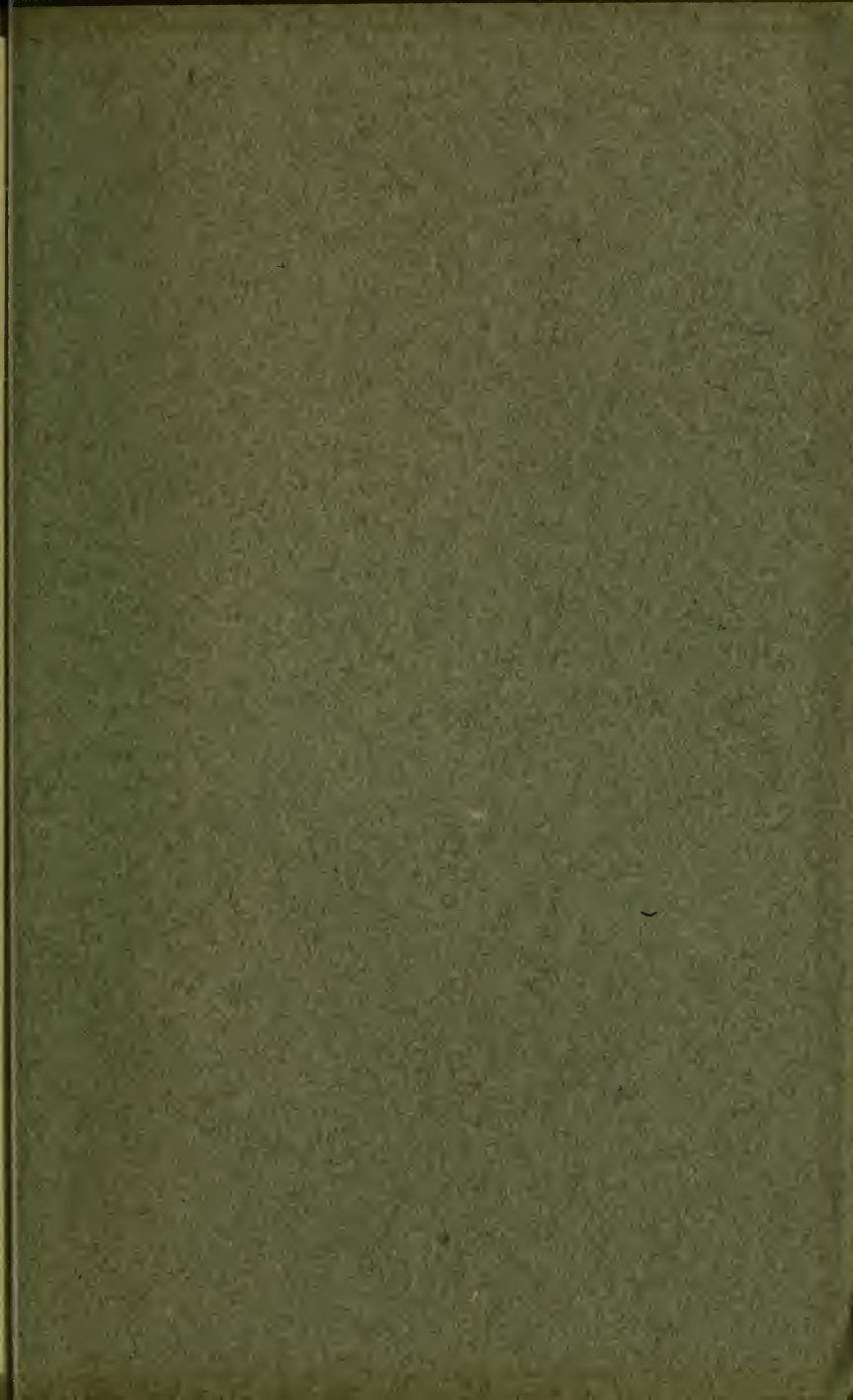
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